IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1260 OF 2004

Sidharam sangappa Meti .. Appellant

Versus

The Solapur Municipal Corporation

Solapur. .. Respondent

Shri M.A.Utagikar for appellant

CORAM : P.V.KAKADE, J.

DATE : 22nd NOVEMBER, 2004

P.C.:

1. Heard the learned counsel for appellant

2. This is an appeal filed by the appellant-plaintiff against the judgment dated 16.7.2004 passed by Dist. Judge, Solapur dismissing his appeal and confirming the order passed by the Lower Court on 31.8.2002 dismissing

the suit.

3. The appellant-plaintiff filed the suit against the defendant-Corporation on the ground that he was lawful owner of the house property bearing Municipal House No.84 corresponding, Final Plot No.254 in Bhavani Peth, Solapur and he was in actual possession. He along with his family members were residing in the said house for several years. There was a Public Urinal which was 40 to 50 years old and was situated to the appellant-plaintiff's suit property and was located on the western side on the land of one Wadtile. The public urinal was being used by the public at large. On 30.4.2002 the defendant-Corporation started digging the foundation for construction of new urinal on a spot which is about 20 ft. away from the house of the plaintiff while the plaintiff was not in his house and hence the suit came to be filed against the Corporation on the ground that the new construction of the urinal amounted to nuisance to the plaintiff. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the suit deserves to be dismissed and passed order accordingly. The appeal was carried to the District Court. The learned District Judge heard

the appeal on merits and came to the conclusion and confirmed the findings recorded by the Civil Court and dismissed the appeal and hence the present Second Appeal.

4. At the outset it may be noted that the question involved in this appeal was purely question of fact namely whether the activities of the Municipal Corporation contemplated under Section 180 of the Municipal Corporation Act amounting to nuisance to the plaintiff. Both the courts below have discussed the entire evidence on record and it is seen that they have concurrently found that there was no nuisance caused to the plaintiff especially when it is an admitted position that the urinal did exist for 40 to 50 years earlier. In any case there is no substantial question of law involved in this appeal and therefore, it deserves to be dismissed and stands dismissed in limine.